

1 Andrea Darrow Smith, Esq. (SBN: 265237)
2 andrea@westcoastlitigation.com

2 Joshua B. Swigart, Esq. (SBN: 225557)
3 josh@westcoastlitigation.com

3 **Hyde & Swigart**

4 4129 Main Street, Suite B8
5 Riverside, CA 92501
(951) 784-7770
6 (619) 297-1022

7 Attorneys for Marc Uribe
8
9

10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 HYDE & SWIGART
13 Riverside, California
14

Marc Uribe v. Legal Recovery Law Offices, Inc.	Plaintiff, Defendant.	Case No: <u>'11CV1157 BEN WMc</u> Complaint For Damages Jury Trial Demanded
--	------------------------------	--

20 **INTRODUCTION**

- 21 1. The United States Congress has found abundant evidence of the use of
22 abusive, deceptive, and unfair debt collection practices by many debt
23 collectors, and has determined that abusive debt collection practices
24 contribute to the number of personal bankruptcies, to marital instability, to the
25 loss of jobs, and to invasions of individual privacy. Congress wrote the Fair
26 Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter
27 “FDCPA”), to eliminate abusive debt collection practices by debt collectors,
28 to insure that those debt collectors who refrain from using abusive debt

- 1 collection practices are not competitively disadvantaged, and to promote
2 consistent State action to protect consumers against debt collection abuses.
3 2. The California legislature has determined that the banking and credit system
4 and grantors of credit to consumers are dependent upon the collection of just
5 and owing debts and that unfair or deceptive collection practices undermine
6 the public confidence that is essential to the continued functioning of the
7 banking and credit system and sound extensions of credit to consumers. The
8 Legislature has further determined that there is a need to ensure that debt
9 collectors exercise this responsibility with fairness, honesty and due regard
10 for the debtor's rights and that debt collectors must be prohibited from
11 engaging in unfair or deceptive acts or practices.
12 3. Marc Uribe, ("Plaintiff"), through Plaintiff's attorneys, brings this action to
13 challenge the actions of Legal Recovery Law Offices, Inc., ("Defendant"),
14 with regard to attempts by Defendant to unlawfully and abusively collect a
15 debt allegedly owed by Plaintiff, and this conduct caused Plaintiff damages.
16 4. Plaintiff makes these allegations on information and belief, with the exception
17 of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which
18 Plaintiff alleges on personal knowledge.
19 5. While many violations are described below with specificity, this Complaint
20 alleges violations of the statutes cited in their entirety.
21 6. Unless otherwise stated, all the conduct engaged in by Defendant took place
22 in California.
23 7. Any violations by Defendant were knowing, willful, and intentional, and
24 Defendant did not maintain procedures reasonably adapted to avoid any such
25 violation.

26 **JURISDICTION AND VENUE**

- 27 8. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. §
28 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.

1 9. This action arises out of Defendant's violations of the Fair Debt Collection
2 Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal Fair
3 Debt Collection Practices Act, California Civil Code §§ 1788-1788.32
4 ("Rosenthal Act").

5 10. Because Defendant does business within the State of California, personal
6 jurisdiction is established.

7 | 11. Venue is proper pursuant to 28 U.S.C. § 1391.

8 12. At all times relevant, Defendant conducted business within the State of
9 California.

PARTIES

13 14. Defendant is located in the City of San Diego, in the State of California.

14 15. Plaintiff is obligated or allegedly obligated to pay a debt, and is a “consumer”
as that term is defined by 15 U.S.C. § 1692a(3).

16. Defendant is a person who uses an instrumentality of interstate commerce or
17. the mails in a business the principal purpose of which is the collection of
18. debts, or who regularly collects or attempts to collect, directly or indirectly,
19. debts owed or due or asserted to be owed or due another and is therefore a
20. debt collector as that phrase is defined by 15 U.S.C. § 1692a(6).

21 17. Plaintiff is a natural person from whom a debt collector sought to collect a
22 consumer debt which was due and owing or alleged to be due and owing from
23 Plaintiff, and is a “debtor” as that term is defined by California Civil Code §
24 1788.2(h).

25 18. Defendant, in the ordinary course of business, regularly, on behalf of himself,
26 herself, or others, engages in debt collection as that term is defined by
27 California Civil Code § 1788.2(b), is therefore a debt collector as that term is
28 defined by California Civil Code § 1788.2(c).

19. This case involves money, property or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction. As such, this action arises out of a consumer debt and “consumer credit” as those terms are defined by Cal. Civ. Code § 1788.2(f).

FACTUAL ALLEGATIONS

20. Sometime before March 12, 2011, Plaintiff is alleged to have incurred certain financial obligations.

21. These financial obligations were primarily for personal, family or household purposes and are therefore a “debt” as that term is defined by 15 U.S.C. §1692a(5).

22. These alleged obligations were money, property, or their equivalent, which is due or owing, or alleged to be due or owing, from a natural person to another person and are therefore a “debt” as that term is defined by California Civil Code §1788.2(d), and a “consumer debt” as that term is defined by California Civil Code §1788.2(f).

23. Sometime thereafter, but before March 12, 2011, Plaintiff allegedly fell behind in the payments allegedly owed on the alleged debt. Plaintiff currently takes no position as to the validity of this alleged debt.

24. Subsequently, but before March 12, 2011, the alleged debt was assigned, placed, or otherwise transferred, to Defendant for collection.

25. On or about March 12, 2011, Defendant telephoned Plaintiff at his place of employment and demanded payment of the alleged debt.

26. This communication to Plaintiff was a “communication” as that term is defined by 15 U.S.C. § 1692a(2), and an “initial communication” consistent with 15 U.S.C. § 1692g(a).

27. This communication was a “debt collection” as Cal. Civ. Code 1788.2(b) defines that phrase, and an “initial communication” consistent with Cal. Civ. Code § 1812.700(b).

- 1 28. Plaintiff informed Defendant that he would not accept further calls at his
2 place of employment.
- 3 29. On or about April 26, 2011 Plaintiff faxed a letter to Defendant disputing the
4 alleged debt and requesting validation of the debt.
- 5 30. On or about May 16, 2011, Defendant again called Plaintiff at his place of
6 employment, despite Plaintiff's previous admonishment that Defendant was
7 not to call Plaintiff's workplace.
- 8 31. Without the prior consent of the consumer given directly to the Defendant or
9 the express permission of a court of competent jurisdiction, Defendant
10 communicated with the consumer in connection with the collection of a debt
11 at an unusual time or place or a time or place known or which should be
12 known to be inconvenient to the consumer. Consequently, Defendant violated
13 15 U.S.C. § 1692c(a)(1).
- 14 32. Because this violated certain portions of the federal Fair Debt Collection
15 Practices Act as these portions are incorporated by reference in the Rosenthal
16 Fair Debt Collection Practices Act, through California Civil Code § 1788.17,
17 this conduct or omission violated Cal. Civ. Code § 1788.17.
- 18 33. Without the prior consent of the consumer given directly to the Defendant or
19 the express permission of a court of competent jurisdiction, Defendant
20 communicated with the consumer in connection with the collection of a debt
21 at the consumer's place of employment when Defendant knew or had reason
22 to know that the consumer's employer prohibited the consumer from
23 receiving such communication. Consequently, Defendant violated 15 U.S.C.
24 § 1692c(a)(3).
- 25 34. Because this violated certain portions of the federal Fair Debt Collection
26 Practices Act as these portions are incorporated by reference in the Rosenthal
27 Fair Debt Collection Practices Act, through California Civil Code § 1788.17,
28 this conduct or omission violated Cal. Civ. Code § 1788.17.

- 1 35. On or about May 16, 2011, Plaintiff again faxed a letter to Defendant
2 disputing the alleged debt and requesting validation of the debt.
- 3 36. On or about May 17, 2011 Defendant sent a fax to Plaintiff's place of
4 employment containing verification of the alleged debt.
- 5 37. The fax cover sheet contained the following statement "Please review
6 statements provided and verification of debt letter. Please contact our offices
7 to discuss once you have reviewed the material and if you still dispute the
8 amount owed."
- 9 38. The fax cover sheet further explained "If you are the intended recipient, this
10 notice has been sent to you by a law office specializing in the area of debt
11 collection. Be advised that this an attempt to collect a debt and any
12 information obtained will be used for that purpose."
- 13 39. Without the prior consent of the consumer given directly to the Defendant or
14 the express permission of a court of competent jurisdiction, Defendant
15 communicated with the consumer in connection with the collection of a debt
16 at an unusual time or place or a time or place known or which should be
17 known to be inconvenient to the consumer. Consequently, Defendant violated
18 15 U.S.C. § 1692c(a)(1).
- 19 40. Because this violated certain portions of the federal Fair Debt Collection
20 Practices Act as these portions are incorporated by reference in the Rosenthal
21 Fair Debt Collection Practices Act, through California Civil Code § 1788.17,
22 this conduct or omission violated Cal. Civ. Code § 1788.17.
- 23 41. Without the prior consent of the consumer given directly to the Defendant or
24 the express permission of a court of competent jurisdiction, Defendant
25 communicated with the consumer in connection with the collection of a debt
26 at the consumer's place of employment when Defendant knew or had reason
27 to know that the consumer's employer prohibited the consumer from
- 28

HYDE & SWIGART
Riverside, California

- 1 receiving such communication. Consequently, Defendant violated 15 U.S.C.
2 § 1692c(a)(3).
- 3 42. Because this violated certain portions of the federal Fair Debt Collection
4 Practices Act as these portions are incorporated by reference in the Rosenthal
5 Fair Debt Collection Practices Act, through California Civil Code § 1788.17,
6 this conduct or omission violated Cal. Civ. Code § 1788.17.
- 7 43. Defendant communicated with a person other than the consumer for the
8 purported purpose of acquiring location information and stated that the
9 consumer owed a debt. Consequently, Defendant violated 15 U.S.C. § 1692b
10 (2).
- 11 44. Because this violated certain portions of the federal Fair Debt Collection
12 Practices Act as these portions are incorporated by reference in the Rosenthal
13 Fair Debt Collection Practices Act, through California Civil Code § 1788.17,
14 this conduct or omission violated Cal. Civ. Code § 1788.17.
- 15 45. Except as provided in 15 U.S.C. § 1692b, and without the prior consent of the
16 consumer given directly to the Defendant, and without the express permission
17 of a court of competent jurisdiction, and for a purpose not reasonably
18 necessary to effectuate a postjudgment judicial remedy, Defendant
19 communicated, in connection with the collection of a debt, with a person
20 other than the consumer, his attorney, a consumer reporting agency, the
21 creditor, the attorney of the creditor, or the attorney of Defendant.
22 Consequently, Defendant violated 15 U.S.C. § 1692c(b).
- 23 46. Because this violated certain portions of the federal Fair Debt Collection
24 Practices Act as these portions are incorporated by reference in the Rosenthal
25 Fair Debt Collection Practices Act, through California Civil Code § 1788.17,
26 this conduct or omission violated Cal. Civ. Code § 1788.17.

27 ///

28 ///

CAUSES OF ACTION

COUNT I

FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)

15 U.S.C. §§ 1692 ET SEQ.

47. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.
 48. The foregoing acts and omissions constitute numerous and multiple violations of the FDCPA, including but not limited to each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.
 49. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from Defendant.

COUNT II

ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT (ROSENTHAL ACT)

CAL. CIV. CODE §§ 1788-1788.32

50. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.
 51. The foregoing acts and omissions constitute numerous and multiple violations of the Rosenthal Act, including but not limited to each and every one of the above-cited provisions of the Rosenthal Act, Cal. Civ. Code §§ 1788-1788.32
 52. As a result of each and every violation of the Rosenthal Act, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to

\$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from Defendant.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant, and Plaintiff be awarded damages from Defendant, as follows:

- An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
 - An award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3);
 - An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b);
 - An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c).

53. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully submitted,

Hyde & Swigart

Date: May 26, 2011

By: /s/ Andrea Darrow Smith
Email: andrea@westcoastlitigation.com
Attorneys for Plaintiff